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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,458	02/12/2004	Gary Alstot	1147-110.US	2278

7590 01/25/2006

Colin P. Abrahams
Suite 400
5850 Canoga Avenue
Woodland Hills, CA 91367

EXAMINER

PONOMARENKO, NICHOLAS

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,458

Applicant(s)

ALSTOT ET AL.

Examiner

Nicholas Ponomarenko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Specification

2. The disclosure is objected to because of the following informalities: a reference to the Internet web page is provided on page 5, line 15, which is not allowed since the Internet web page is considered to be not a permanent record. Appropriate correction is required.
3. The specification has not been checked to the extent necessary to determine the presence of all possible errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,313,545.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-24 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Finley et al. (US 6,313,545).

Patent '545 teaches a mixing apparatus for mixing relatively low salinity fluid with relatively high salinity fluid, essentially as claimed in the application. The patent and the application disclose common subject matter, as follows:

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A mixing apparatus for mixing relatively low salinity fluid with relatively high salinity fluid, having

a housing having an upper end and a lower end, a fluid inlet at or near the lower end, and a fluid outlet at or near the upper end,

wherein the relatively high salinity fluid in use enters the housing through the fluid inlet and is discharge from the housing through the fluid outlet;

a feed tube having a first end connectable to a source of relatively low salinity fluid and second end for introducing relatively low salinity fluid to the housing to mix the relatively high salinity fluid with the relatively low salinity fluid to form a fluid mixture; and

at least one power generator associated with the housing, the power generator being driven by the mixing of the relatively high salinity fluid with the relatively low salinity fluid.

Additionally, patent '545 teaches other claimed limitations, including the ratio of cross sectional areas of mixing tubes (column 15, lines 29-31), the plurality of propellers (Figure 4 or 5), the plurality of the generators (column 22, line 59), the different fluid sources with different salinity, the plurality of branch tubes (Figure 11) and the vertical annular tubes (Figure 14). No feature in the claimed application distinguishes from the prior art of record.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant(s) disclosure.

9. When the claims are amended, applicant(s) should state in detail where in the original disclosure or in the drawings the amended features find support. No new matter may be introduced.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Ponomarenko whose telephone number is (571) 272- 2033, Fax: (571) 273-2033, or to his SPE Darren Schuberg – (571) 272-2044.

11. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 2800 Customer Service
Phone: (571) 272-2815

np
January 18, 2006



**Nicholas Ponomarenko
Primary Examiner
Technology Center 2800**